

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

PATRICK CROWE,

Plaintiff,

v.

DECISION AND ORDER
10-CV-01003

LEROY CENTRAL SCHOOL DISTRICT,

Defendant.

The instant employment discrimination case, involving claims that defendant violated the Age Discrimination in Employment Act (29 U.S.C. §621, *et. seq.*) was referred to Magistrate Judge Jeremiah J. McCarthy pursuant to 28 U.S.C. §636(b)(1), for supervision of all pre-trial proceedings. Defendant filed a motion for summary judgment on September 19, 2012. (Dkt. No. 29)

On March 6, 2013, Magistrate Judge McCarthy issued a Report and Recommendation recommending that defendant's motion for summary judgment be granted and plaintiff's complaint dismissed. (Dkt. No. 36). Magistrate Judge McCarthy found, after construing the evidence in the light most favorable to plaintiff, that plaintiff had failed to establish a *prima facie* claim of age discrimination. Specifically, the Magistrate Judge determined that plaintiff's reassignment from teaching 11th grade English to teaching 9th grade English did

not constitute an adverse employment action, and that plaintiff could not show that the defendant's nondiscriminatory reason for the transfer served as a pretext for discrimination based on age.

On March 25, 2013, plaintiff filed objections to Magistrate Judge McCarthy's Report and Recommendation. (Dkt. No. 37). Defendant filed a response to plaintiff's objections on April 9, 2013 and plaintiff filed a reply on April 22, 2013. (Dkt. Nos. 40 and 41) The Court determined that oral argument was unnecessary, and deemed the matter submitted.

Pursuant to 28 U.S.C. §636(b)(1), this Court must make a *de novo* determination of those portions of the Report and Recommendation to which objections have been made.¹ Upon *de novo* review, and after reviewing the parties' submissions, the Court hereby adopts Magistrate Judge McCarthy's recommendation to grant defendant's motion for summary judgment and dismiss plaintiff's claim in its entirety.

Accordingly, for the reasons set forth in Magistrate Judge McCarthy's Report and Recommendation, defendant's motion for summary judgment is

¹ In its response, defendant argues that because plaintiff has failed to specifically identify the portions of the Report and Recommendation to which he objects, this Court should review the Report and Recommendation for clear error only. *Dambrowski v. Astrue*, 590 F. Supp.2d 579, 581. However, the Court finds that plaintiff did specifically object to the portion of the Report and Recommendation wherein the Magistrate Judge finds that plaintiff was not subject to an adverse employment action and also specifically objects to the Magistrate Judge's finding that plaintiff cannot demonstrate that the legitimate, non-discriminatory reasons for the transfer, offered by defendant, were pretextual. Thus, the Court considers those portions of the Report and Recommendation in accordance with the *de novo* standard of review.

granted.

The Clerk of the Court is directed to close the case.

SO ORDERED.

s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT JUDGE

DATED: June 7, 2013